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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-03-NY-003
	)	
Hip Hop City Corp.	)	NAL/Acct. No. 200332380020
Brooklyn, NY	)	
	)	FRN: 0008 5372 76

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: April 21, 2003**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Hip Hop City Corp. ("Hip Hop") has apparently violated Section 301 of the Communications Act of 1934 ("Act")<sup>1</sup>, as amended, by operating an unlicensed radio transmitter on the frequency 1710 kHz. We conclude that Hip Hop is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On January 6, 7, 8, and 9, 2003, the FCC New York Office received information from the FCC Columbia, Maryland monitoring station, regarding an unlicensed AM station operating on 1710 kHz in the New York City area.

3. On January 9, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 1710 kHz in Brooklyn, NY. The agents observed unauthorized radio broadcast on 1710 kHz, and identified the source of the unauthorized transmissions as 1236-1244 Atlantic Avenue, Brooklyn, NY 11216. The agents observed an AM broadcast antenna on the roof of the building. In response to questions, the owner of a car wash, "Brooklyn Finest Hand Car Spa" ("Car Spa"), located in the building, told the agents that a company called "Hip Hop" owned the building. Further investigation confirmed the ownership by Hip Hop. An agent's search of the telephone directory determined that the addresses and phone numbers listed for Hip Hop and Car Spa were the same. There was no evidence of a Commission authorization for this operation in Brooklyn, NY.

4. On January 10, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 1710 kHz in Brooklyn, NY. The agents again observed unauthorized radio broadcast on 1710 kHz, and identified the source of the unauthorized transmissions as 1236-1244 Atlantic Avenue, Brooklyn, NY 11216. The agents obtained access to the roof of 1236 Atlantic Avenue, where they observed a vertical antenna with a coaxial cable leading across the roof into a locked equipment

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<sup>1</sup> 47 U.S.C. § 301.

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room. The agents then informed the owner of Car Spa that there was an unlicensed station operating from the building. In response to questions, the owner of Car Spa again told the agents that Hip Hop owned the building.

5. On January 13, 2003, the New York Office sent Warning Letters, for unlicensed operation, by First Class and Certified Mail Return Receipt Requested, to Hip Hop and Car Spa, addressed to 1244 Atlantic Avenue. The New York Office did not receive a reply to the Warning Letters. On January 16, 2003, the New York Office received a signed receipt for the Warning Letter mailed to Car Spa.

6. On January 18, 2003, Commission agents returned to 1236-1244 Atlantic Avenue, and informed the building construction supervisor about the unlicensed station. The construction supervisor accompanied the agents to the roof, where they observed the antenna and coaxial cable just as before. In response to questions, the construction supervisor provided the agents with information indicating that Eliyahu Ezagui, residing at 1227 President Street, was the responsible party for the building at 1236-1244 Atlantic Avenue.

7. On January 21, 2003, a Commission agent's search of New York State records confirmed that the Chief Executive Officer of Hip Hop is Eliyahu Ezagui, with the principal executive office located at 1227 President Street, Unit 4C, Brooklyn, NY 11225. The New York Office sent a Warning Letter, for unlicensed operation, by First Class and Certified Mail Return Receipt Requested, to Hip Hop, 1227 President Street, Unit 4C, Attention: Eliyahu Ezagui. The New York Office did not receive a reply to the Warning Letter. On January 27, 2003, the New York Office received a signed receipt for the Warning Letter mailed to Hip Hop.

8. On January 29, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 1710 kHz in Brooklyn, NY. The agents again observed unauthorized radio broadcast on 1710 kHz, and identified the source of the unauthorized transmissions as 1236-1244 Atlantic Avenue, Brooklyn, NY 11216. Immediately after locating the source of the signal, the agents made a field strength measurement of the station's signal and determined that the field strength far exceeded the permissible level for a non-licensed low-power radio transmitter.

9. On January 30, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 1710 kHz in Brooklyn, NY. The agents again observed unauthorized radio broadcast on 1710 kHz, and identified the source of the unauthorized transmissions as 1236-1244 Atlantic Avenue, Brooklyn, NY 11216. Immediately after locating the source of the signal, the agents made a field strength measurement of the station's signal and determined that the field strength far exceeded the permissible level for a non-licensed low-power radio transmitter.

10. On February 27, 2003, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 1710 kHz in Brooklyn, NY. The agents again observed unauthorized radio broadcast on 1710 kHz, and identified the source of the unauthorized transmissions as 1236-1244 Atlantic Avenue, Brooklyn, NY 11216. Immediately after locating the source of the signal, the agents made a field strength measurement of the station's signal and determined that the field strength far exceeded the permissible level for a non-licensed low-power radio transmitter.

### III. DISCUSSION

11. Section 301 of the Act sets forth generally that no person shall use or operate any

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apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. A review of Commission's records showed that there was no evidence of a Commission authorization to operate this station on the frequency 1710 kHz, in Brooklyn, NY.

12. Based on the evidence before us, we find that Hip Hop was responsible for the operation of radio transmission equipment on 1710 kHz on January 9, 10, 29, and 30, 2003, and February 27, 2003, without a Commission authorization in willful<sup>2</sup> and repeated<sup>3</sup> violation of Section 301 of the Act.

13. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>4</sup>, sets the base forfeiture amount for operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>5</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

#### **IV. ORDERING CLAUSES**

14. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules<sup>7</sup>, Hip Hop is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

15. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Hip Hop SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup>47 C.F.R. § 1.80.

<sup>5</sup>47 U.S.C. § 503(b)(2)(D).

<sup>6</sup>47 U.S.C. § 503(b).

<sup>7</sup>47 C.F.R. §§ 0.111, and 0.311.

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Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380020 and FRN: 0008 5372 76.

17. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380020.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

20. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

21. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Hip Hop City Corp., 1227 President Street, Unit 4C, Brooklyn, NY 11225.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office

Attachment A - Condensed List of Small Entities, October 2002

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<sup>8</sup> See 47 C.F.R. § 1.1914.